

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
V.) CASE NO: 2:06-cr-108-MHT
)
GARETT ALBERT DYKES)

MOTION TO EXTEND TIME FOR FILING NOTICE OF APPEAL

NOW COMES the Defendant, Garrett A. Dykes, by and through undersigned counsel and pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, and respectfully moves this Court to extend the time to file a Notice of Appeal in this matter, to November 8, 2006.

In support of this Motion, the Defendant would show:

1. Rule 4(b)(4) of the Federal Rules of Appellate Procedure permits the district court, “upon a finding of excusable neglect or good cause,” made “before or after the time has expired, with or without motion and notice,” to “extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).”
2. The judgment in this case was entered on September 29, 2006, making the Notice of Appeal due on or before October 10, 2006 (since October 9 is a federal holiday).
3. Mr. Dykes has today timely filed an Unopposed Motion to Amend that judgment, to include terms agreed to in the Plea Agreement entered into by the parties and accepted by this Court, that, “to the extent this Court has the authority, to recommend, with respect to offenses related to the defendant’s conduct in the instant matter, that (a) the federal sentence run concurrently with any sentence imposed by the State of Alabama; and (b) the defendant receive credit against his federal sentence for time spent in state pretrial detention.” (Plea Agreement, D.E. 11, p. 3, paragraph c(2).)

4. In the Plea Agreement, the parties agreed that Mr. Dykes specifically reserved the right to appeal the Court's denial of his Motion to Dismiss for lack of jurisdiction (D.E. 11, pp. 5 - 6; D.E. 16).

5. In the event that this Court is not able to rule on the Unopposed Motion to Amend Judgment before October 10, and if an appellate court were to find that the filing of the Unopposed Motion did not toll the applicable time limits under F.R.A.P. 4, Mr. Dykes' preserved right to appeal would be jeopardized.

WHEREFORE, Defendant prays that this Motion be granted and that this Court find that good cause exists to extend the time for filing a Notice of Appeal to November 8, 2006, and that this Court so extend such time.

Respectfully submitted,

s/Christine A. Freeman
CHRISTINE A. FREEMAN
TN BAR NO.: 11892
Attorney for Garrett Dykes
Federal Defenders
Middle District of Alabama
201 Monroe Street, Suite 407
Montgomery, AL 36104
TEL: (334) 834-2099
FAX: (334) 834-0353
E-Mail: Christine_Freeman@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Todd Brown, Esquire
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, Alabama 36104

Respectfully submitted,

s/Christine A. Freeman
CHRISTINE A. FREEMAN
TN BAR NO.: 11892
Attorney for Garrett Dykes
Federal Defenders
Middle District of Alabama
201 Monroe Street, Suite 407
Montgomery, AL 36104
TEL: (334) 834-2099
FAX: (334) 834-0353
E-Mail: Christine_Freeman@fd.org